



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/169519

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on November 19, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Bureau of Long Term Support correctly ended 2:1 services, effective October 9, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tina Miller

Associate Area Director
The Management Group (TMG)
1 South Pickney Street, Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. In December 2011, [REDACTED] and [REDACTED], paid supportive home care workers, submitted a letter to TMG / Wisconsin IRIS, to explain why Petitioner needed two people to be with her when she went into the community. (Exhibit 5; Testimony of [REDACTED])
3. Petitioner's Individual Support and Service Plan from January 2012, included "companionship in the community services" from [REDACTED] and [REDACTED], paid supportive home care workers. (Exhibit 4)
4. Petitioner's Individual Support and Service Plan for December 1, 2014 to November 30, 2015, also listed Supportive Home Care/Companion Care as a service, with [REDACTED], [REDACTED], and [REDACTED], listed as the providers. (Exhibits 6 and N1)
5. Since January 2012, Petitioner has paid two individuals to accompany her on trips into the community. [REDACTED] assisted the Petitioner and her mother in securing these services and has had several conversations concerning coverage of 2:1 services with the Petitioner's former IRIS Consultant, [REDACTED], as well as other IRIS staff. TMG/IRIS had previously approved the expenditure. (Testimony of [REDACTED]; Testimony of Petitioner's mother)
6. On October 9, 2015, the Department of Health Services (DHS) sent the Petitioner a notice advising her that effective October 9, 2015, she would not be allowed to have 2:1 staffing for non-medical outings into the community. (Exhibit 1)

DISCUSSION

"Each client has the right to adequate and timely notice of adverse action." *Income Maintenance Manual (IMM)* §3.2 "Timely Notice" is defined in IMM §3.2.3: "Provide adequate notice at least **10** days before the effective date of any intended adverse action."

The only exceptions to the 10-day rule are enumerated in IMM §3.2.4:

1. Factual information confirms a recipient or payee's death and there's no relative to take his/her place a primary person.
2. A clear, written statement initiated and signed by the client is submitted stating s/he no longer wishes to receive benefits.
3. The client provides information that requires adverse action and s/he voluntarily states, in writing, that s/he knows that this will be the result.
4. The client has been admitted or committed to an institution which makes the client ineligible for Medicaid (MEH 6.9 Inmates) or FS benefits (FSH 3.2.1.4 Institution)
5. The client's whereabouts are unknown and the post office returns mail directed to him/her with no forwarding address.
6. The client has applied for and is receiving benefits from another jurisdiction.
7. The client's physician prescribes a change in the level of nursing home care.
8. A child is voluntarily placed in a foster home by his/her legal guardian or is removed from his/her home by a court order.

9. State or Federal law requires a benefit adjustment for all, or a significant portion of FS and/or MA cases . This circumstance is usually referred to as a "mass change".
10. In FS, the FS group's allotment varies from month to month within the eligibility period and the group was notified in writing (by a Positive Notice or CARES-generated notice) at the beginning of certification of the actual allotment amounts they would receive.
11. In FS, the FS group:
 - a. Applied for other assistance and FS; and,
 - b. Has begun receiving FS; and,
 - c. The group was provided with a notice when the group was found FS eligible that the FS allotment would be reduced if, and when, the other assistance began.
12. A FS group member is disqualified for intentional program violation (IPV), or the allotment of the remaining FS group is reduced or discontinued because of the IPV.
13. Verification was postponed in a group's expedited FS application, and later verification requires reduced or discontinued benefits. The group already received a notice stating that the allotment would be reduced or terminated if verification required such an action.
14. A FS group failed to make cash repayment of a fraud claim and is converted from cash repayment to benefit reduction.
15. A resident of a drug or alcoholic treatment center or group living arrangement (FSH, 3.2.1) loses FS eligibility because:
 - a. The facility lost its certification from the appropriate authority, or
 - b. Its authorized representative status is suspended because it is approved by USDA/FCS as an FS retailer.
16. In SeniorCare, a prescription drug billing must be reversed due to an incorrect billing, and that reversal results in a benefit or service change.

See Also 42 CFR §§431.213 and 431.214

The foregoing policy provisions are echoed in the Wisconsin Administrative code:

104.01(9) RIGHT TO INFORMATION CONCERNING PROGRAM POLICY.

... (b) *Notice of intended action.*

1. Except when changes in the law require automatic grant adjustments for classes of recipients, in every instance in which the department intends to discontinue, terminate, suspend or reduce a recipient's eligibility for MA or coverage of services to a general class of recipients, the department shall send a written notice to the recipient's last known address at least by the minimum time period required under [42 USC 601-613](#) and before the date upon which the action would become effective, informing the recipient of the following:
 - a. The nature of the intended action;
 - b. The reasons for the intended action;
 - c. The specific regulations supporting the action;
 - d. An explanation of the recipient's right to request a fair hearing; and,

- e. The circumstances under which assistance will be continued if a hearing is requested.
- 2. The department shall mail the individual written notice to be received no later than the date of intended action under any of the following circumstances: \
 - a. The department receives a clear written statement signed by a recipient that states the recipient no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that the recipient understands that the consequence of supplying the information will be termination or reduction of assistance;
 - b. The department has factual information confirming the death of a recipient;
 - c. The recipient has been admitted or committed to an institution and further payments to the recipient do not qualify for federal financial participation under the state plan for MA;
 - d. The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;
 - e. The recipient's whereabouts are unknown and departmental mail directed to the recipient has been returned by the post office indicating no known forwarding address;
 - f. A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;
 - g. An AFDC child is removed from the home as a result of judicial determination or voluntarily placed in foster care by a legal guardian;
 - h. A change in level of medical care is prescribed by the recipient's physician;
 - i. The recipient's eligibility for MA is to be terminated or suspended under the provisions of s. [DHS 104.02 \(5\)](#); or
 - j. The recipient has received service during a period of ineligibility and the department is preparing to take recovery action, pursuant to s. [DHS 108.03 \(3\)](#).

Wis. Admin. Code §104.01(9)(b)

The requirement that the State provide advance notice of an intended negative action is also stated in the Federal Regulations under 42 CFR Part 431.

42 CFR §431.200 provides the right to a hearing to “any person whose claim for assistance is denied or not acted upon promptly.”

42 CFR §431.211, “The State or local agency must send a notice at least 10-days before the date of action...”

None of the stated exceptions to the “10-day rule” apply to this case. As such, DHS was required to give the Petitioner ten days notice before it ended her 2:1 services in the community. It did not do this, likely due to miscommunication with TMG and its staff.

Because DHS’s notice of its intended action was improper, it did not correctly end 2:1 services in the community. DHS/TMG will have to reinstate the service, until such time as it gives the Petitioner proper notice of its intended action.

CONCLUSIONS OF LAW

DHS did not correctly end the Petitioner’s 2:1 services effective October 9, 2015.

THEREFORE, it is

ORDERED

That DHS/TMG reinstate the Petitioner's 2:1 services for community outings. DHS/TMG shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

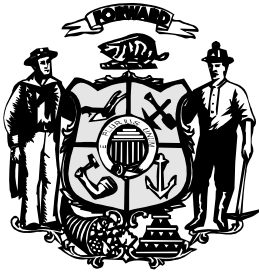
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of December, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 9, 2015.

Bureau of Long-Term Support

